



**THE ATTORNEY GENERAL
OF TEXAS**

April 26, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Stanley R. Watson
County Attorney
Hardeman County
P. O. Box 506
Quanah, Texas 79252

LO-89-38

Dear Mr. Watson:

You ask whether the Commissioners Court of Hardeman County may pay compensation to a constable for work performed at the sheriff's office and the jail. You advise that the work performed for the sheriff is primarily related to custodial duties at the sheriff's office and jail and the feeding of prisoners. We assume that the constable would not be performing the work at the jail in his capacity as constable. Rather, the work at the jail would be separate employment. Therefore, we will consider your question to be whether it is appropriate for an individual to hold the position of constable and the position of jail employee.

The constitutional prohibition against dual office holding and the common law doctrine of incompatibility were succinctly discussed in Attorney General Opinion JM-485 (1986) as follows:

The prohibition in the Texas Constitution against dual office holding prevents one person from holding more than one 'civil office of emolument' at one time. Tex. Const., art. XVI, § 40. The courts have held that a person holds a 'civil office' for purposes of that provision if he exercises any sovereign function of government for the benefit of the public and is largely independent of others' control. Ruiz v. State, 540 S.W.2d 809, 811 (Tex. Civ. App. - Corpus Christi 1976, no writ); Tilley v. Rogers, 405 S.W.2d 220, 224 (Tex. Civ. App. - Beaumont 1966, writ ref'd n.r.e.); Aldine Independent School District v. Standley, 280 S.W.2d 578, 583 (Tex. 1955). A constable is a civil officer of emolument. Attorney General Opinion M-45 (1967).

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The common law doctrine of incompatibility prohibits one person from occupying two offices when one office may 'thereby impose its policies on the other or subject it to control in some other way.' Attorney General Opinions JM-129, JM-133 (1984); see Thomas v. Abernathy County Line Independent School District, 290 S.W. 152 (Tex. Comm'n App. 1927, holding approved); State ex rel. Brennan v. Martin, 51 S.W.2d 815, 817 (Tex. Civ. App. - San Antonio 1932, no writ).

A person who performs custodial work for the sheriff and assists in the feeding of prisoners is not a civil officer of emolument because he is completely under the control of the sheriff. So long as the control the sheriff exercises over the constable does not invade an area in which the constable has powers and duties the two officers are not incompatible.

While it is conceivable that a constable who works at the jail and in the sheriff's office might be called upon to perform duties incompatible with his office, none of the information you have furnished us suggests either a conflict of interest or a violation of any other law.

No reason is perceived why the commissioners court may not compensate the constable for his work at the sheriff's office and jail so long as his duties are not incompatible with the duties of his office as constable.

Very truly yours,



Tom G. Davis
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk

TGD/SW/bc

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